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The Advocate

FORDHAM LAW SCHOOL

Vol. 19 No. 5

March, 1987

HARLEM REAL ESTATE CONFERENCE

by Dexter C. Wadsworth

"The number of building sales in Harlem more than doubled in five years, to 1,131 in 1985 from 503 in 1980, according to figures compiled by the Harlem Urban Development Corporation. The average price per building climbed [tenfold during the same] period." (New York Times, 12/19/86, p. A1).

The increase in activity in the Harlem real estate market was not unexpected. Market participants, community leaders and government agencies now face the issue of how to respond to the boom.

On March 31, 1987, at 6:00 PM in the James B. McNally Amphitheatre, Fordham Law School will host a panel discussion which will focus on the causes, trends, obstacles and solutions for redevelopment of one-fourth of the acreage of Manhattan island.

To date, the following persons have agreed to be panelists:

—Deputy Commissioner Robert Davis, Housing Preservation & Development;

—Mr. Eugene Webb, Webb & Brooker, Inc.;

—Mr. Lloyd Dickens, private developer/broker;

—Ms. Luanna Robinson, former Community Board #9 member.

The City of New York—which owns approximately 60% of Harlem real estate as a result of tax foreclosures—must struggle to reconcile somewhat conflicting public concerns. An important municipal objective is to sell the Harlem lots back to private developers, thereby collecting outstanding tax revenues and encouraging additions to New York's housing stock. Another equally important goal, however, is ensuring that rehabilitation of the area's buildings by private developers does not result in the displacement of local residents through the process known as "gentrification".

[It is important to note, in this connection, the recent decision of the New York Court of Appeals in, *Chinese Staff Workers v. N.Y.C.*, which required the City of New York to perform a strict environmental impact review which would uncover any secondary displacement effects of redevelopment. In this case, the Court revoked the special permit issued to developers of a luxury condominium on an empty lot in the Chinatown section of New York, finding that the City had failed to perform a review adequate to discover the second-

dary impact the project would have on the surrounding neighborhood, i.e., that the success of a luxury condo in Chinatown would increase development pressures on the area which would in turn lead to eventual displacement of residents unable to meeting rapidly rising housing costs.]

Developers contend that it is infeasible to complete a project in Harlem unless the City allows them to collect rents far in excess of what current residents can afford. To many developers, it is as simple as "no gentrification, no redevelopment." The local community group are obviously strictly opposed to this scenario. They remain skeptical about the City's claims that it lacks the funds to subsidize the large scale reconstruction that Harlem requires.

Meanwhile, the City of New York continues to make significant efforts to resolve the situation. Recently, the Department of Housing Preservation & Development announced a policy to sell off its Harlem properties only on a block-by-

block basis. The idea is to revitalize whole areas rather than individual buildings. Also, the City has attempted to stimulate rebuilding in Harlem by making it possible for midtown developers to obtain otherwise unavailable 421a tax exemptions either by construction of housing in Harlem or by purchase of the exemptions from a contractor building in Harlem.

While the City plays a pivotal role in the future of Harlem real estate, it is not true that all other interested parties are sitting on their hands. Lenders are developing creative financing schemes to spur growth. Brokers are using revolutionary marketing strategies to heighten the appeal of Harlem residences, and small developers are using every technique from "sweat equity" to conversion to ensure their niche in the Harlem real estate speculation game.

For an in depth investigation of the legal, social, economic and political issues underlying Harlem's Renaissance, attend the March 31 panel discussion.

RACIAL BIAS

ADVOCATE STAFF WRITER

Gil Noble, host and producer of ABC television's "Like It Is," spoke at Fordham on Feb. 2, 1987 as part of the Dean's Lecture Series co-sponsored by the Black Americans Law Student Association (BALSA). Mr. Noble's address focused on media freedom.

Mr. Noble maintains that the media are qualifiedly free. Generally, the media are allowed to cover a wide range of issues with relatively little official interference. Mr. Noble did, however, cite governmental control of media coverage during the

Granada invasion as an exception to the rule.

Media freedom, maintains Mr. Noble, is not a function of what the government allows to be covered, but rather of what the media editors and executives choose to cover.

World news organizations are, according to Mr. Noble, overwhelmingly controlled by Caucasians of European descent, whose point of view represents a very small minority of the world's population.

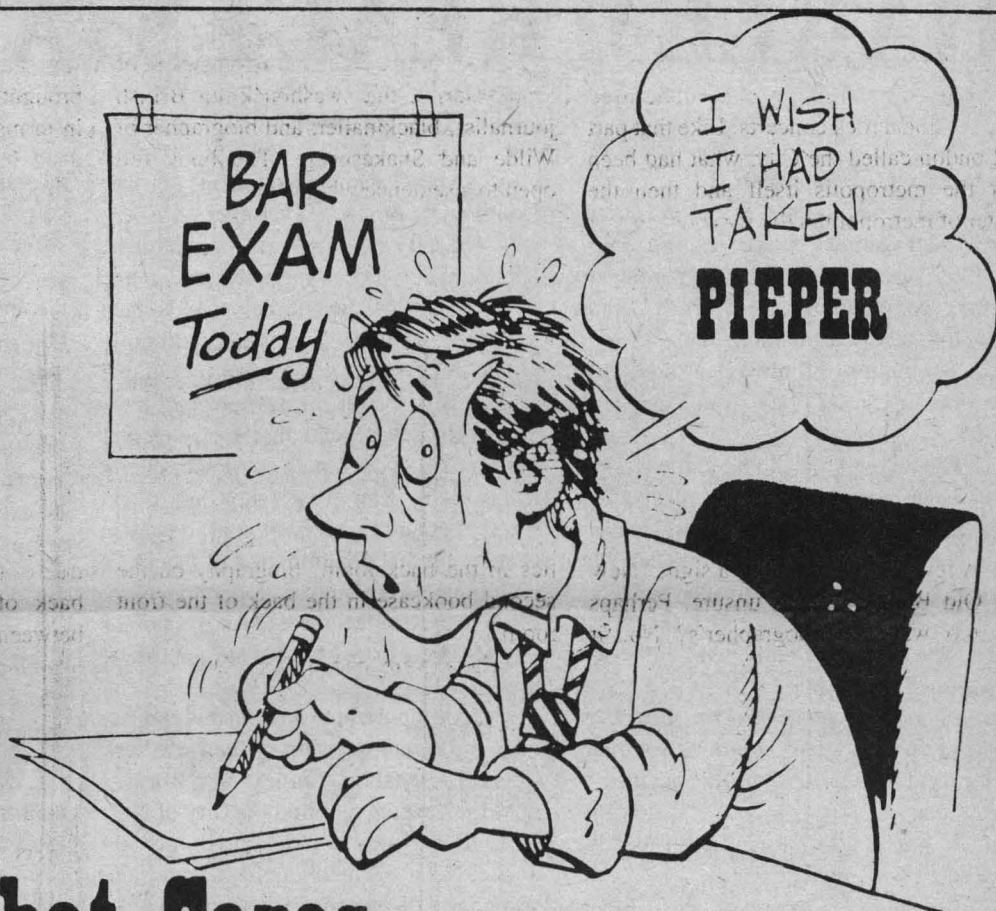
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LAST DAYS OF AN OLD BOOKSTORE

by William Bryk

After 92 years at 15 Ann Street, the Isaac Mendoza Book Company began its first and last sale on Tuesday, February 10, 1987. Stock and store must move, for the landlord is gutting and renovating the building. Mendoza's probably will not reopen.

I found the bookstore nearly ten years ago. Lower Manhattan was wholly new to me. There weren't many permanent residents outside Soho and Tribeca. Battery Park City was an empty sand dune used for occasional rock concerts. Like that part of London called the City, what had been first the metropolis itself and then the center of metropolitan life was now almost empty after the workday's end.

During a January lunch hour, I strolled to Beekman Street and entered Theatre Alley. It had been the heart of the theatre district when New York went barely north of Chambers Street. I wandered down its empty pavement to Ann Street. To my left was a sordid peepshow and adult bookstore, with furtive little men popping in and out. I turned right.

A few feet ahead hung a sign, "New and Old Books." I was unsure. Perhaps this too was a pornographer's? No, it wasn't.

Behind the grimy windows was the sort of place that usually lives only in a booklover's fantasies.

Beyond the front door was an enclosed porch which sheltered tables loaded with paperbacks for a quarter, fifty cents, or a dollar. On sunny days, they stood outside, much as in Paris, where second-hand book dealers set up their tables, carts, and portable shelves by the Seine near the Academie Francaise. Inside, the store was old, dusty, and lined to the ceiling with book-jammed shelves. Framed engravings, prints, and newspaper articles hung in the few empty spaces and gas lights, from the ceiling. There seemed

little order to the books' arrangement. One might spend weeks searching or quickly surrender to temptation and browse. This wasn't just a bookstore. This was paradise.

And the books were *old*. They were not the glossy things one might buy at Barnes & Noble's, B. Dalton, or Paperback Booksmith. They were truly the odd volumes—those which the high tide of Western literature had washed into the little backwater on Ann Street.

I first noticed Vincent Brome's life of Frank Harris, the swashbuckling British journalist, blackmailer, and biographer of Wilde and Shakespeare. The book fell open to a sentence which captures the subject's evasiveness: "Frank Harris was born in two different countries on three different dates and his name was not Frank Harris."

The price was \$3.50. I was hooked.

As I became familiar with the store, I figured out its general arrangement. Novels were in the cellar, rare books and thrillers on the second floor (where I first read *Dracula* and Sax Rohmer's adventures of the insidious Dr. Fu Manchu), literary criticism, foreign books, and politics in the back room, biography on the second bookcase in the back of the front room.

There were ghosts, too. One found them particularly among the novelists—the Jacqueline Susanns and Judith Krantz of their day, from Robert W. Chambers to F. Marion Crawford.

The other were more affecting. These had tried to write great literature and failed. There were shelves upon shelves of once-famous names now merely footnotes in literary history. Hugh Walpole is now remembered largely for Somerset Maugham's savage lampoon in *Cakes and Ale*. The American novelist Winston Churchill is remembered more for a letter he once received from a British statesman ("Mr. Winston Churchill presents his com-

pliments to Mr. Winston Churchill, and begs to draw his attention to a matter which concerns them both.") than his books. Who remembers Gertrude Atherton, Joseph Hergesheimer, or Stanley Weyman?

Or Stephen Phillips. Yet, in this century's first decade, he was compared with Sophocles, Dante, Racine, and Tennyson. His poems ranked with those of Milton and Swinburne. He was the greatest playwright since Shakespeare. *Herod*, *Ulysses*, *Faust*, and his masterpiece, *Nero*, brought him wealth and critical acclaim in terms usually reserved for the glorious dead. Phillips, they said, had breathed new life into the blank verse play. His works would be immortal.

But they were not, and Phillips died in alcoholic squalor before his fiftieth birthday, and *Nero and Other Poems* (first edition, published in 1907) was marked \$2.50 in Mendoza's bookstore.

There was always the joy of finding something new in an old book. Swift's observation, "It is in Men as in Soils, where sometimes there is a Vein of Gold, which the Owner knows not of," holds true of them, too. I was standing near the back of the front room, with a book between my knees and another under my left elbow when I reached up for a third, opened it, and for the first time read Rossetti's "Superscriptions," which opens,

Look in my face; my name is
Might-have-been;

I am also called No-more, Too-late,
Farewell;

In Mendoza's I first dipped into *Remembrances of Things Past*, *The Anatomy of Melancholy*, *The Life of Samuel Johnson*, *LL.D.*, *Anti-Semite and Jew*, *Boxiana*, *The Diary of A Nobody*, *A Woman of No Importance*, and *Hadrian VII*, and glanced at a thousand others. They are part of me. So, too, is the bookstore.

So, where now will one find Swinburne's *Songs Before Sunrise*, Acton's *The Last Bourbon Kings of Naples*, Housman's *Last Poems*, or Belloc's *Sonnets and Verse*? the short stories of Anatole France? the novels of Maurice Baring, Arnold Bennett, or Arthur Machen?

These are good books. Some are great. All were made by craftsmen with at least an odd touch of poetry. But they are not glossy. It doesn't pay enough for today's publishers to keep them in print and today's bookstores in stock.

So, the invisible hand of the market, guided by no value save profit, has obliterated one more corner of paradise. No doubt Mendoza's will be replaced by a seller of Belgian chocolates, and the remaining books will go to the pulper.

So, I went to its funeral and loaded up for the long winter to come.

BIAS from page 3

For Mr. Noble, race biases are insurmountable. Strenuous attempts to extricate oneself from the tutelage of such biases notwithstanding, no White is able to treat the Black cause fairly, and no Black is capable of treating the White cause fairly.

By virtue of this inherent inability to report objectively, White editors, executives and reporters short change the Black communities of the world.

Mr. Noble suggested that were the Black Africans in control of the news reported in western papers, those who are now considered freedom fighters may be labeled terrorists.

The solution to this problem of biased news reports is to open the air waves and print media to as wide a range of biases as possible. Mr. Noble has begun this task by the creation of "Like It Is," a television program devoted to the concerns of the Black community.

Mr. Noble concluded his address by admonishing the Black members of the audience to disregard the popular ethic that requires Blacks and other groups to discard their ethnicity. "It's not good enough to be a good lawyer," he said, "(Blacks) must be lobbyists for the concerns of the race."

Referring to the Civil Rights Move-

ment of the 1960s, Mr. Noble stated that today's younger Blacks are the "children of a struggle that took place on their behalf," and they have a responsibility to their race to continue that struggle.

Without belittling his talent, Mr. Noble attributed his position at ABC to that struggle. In 1962, he began his broadcasting career as a part-time radio announcer for a small Harlem station. By 1967, the networks were "scrambling" to hire Blacks. In that year, ABC hired Mr. Noble.

The networks' desire to hire Blacks was precipitated partly by a Johnson Presidential Commission report finding that Whites were so shocked by the intensity of racial unrest, because they had never been exposed to the views of Blacks from Blacks.

Mr. Noble acknowledged that racism exists in both the Black and White communities, but he considers Black racism "reflexive." It is a response to the racism that was "born in the White community, not the Black community."

Gil Noble was born in Harlem, attended City College at night and served two years in the Army Medical Corps. Prior to his broadcasting career, Mr. Noble was a professional musician.

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The Advocate is the official newspaper of Fordham Law School, published by the students of the school. The purpose of the Advocate is to report news concerning the Fordham Law School Community and developments in the legal profession, and to provide students with a medium for communication and expression of opinion.

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CALENDAR

Thursday, March 26-7 - - - - - Child Abuse Conference
Friday, March 27 - - - - - I.L.J. dinner
Tuesday, March 31 - - - - - Harlem Real Estate Conference
Wednesday, April 8-9 - - - - - Fordham Follies
March 14-22 - - - - - Spring Recess



ABA/LSJ

EDITORIAL

With Student Bar Association elections just around the corner, some observations:

- The President of the SBA receives a \$3,000 tuition reimbursement.
- As of this writing, the student directory has yet to be published.
- On March 4, graduating students were notified of an additional fifty dollar graduation fee, grand total: \$100.00.
- One hundred nights festivities were cancelled.
- The SBA office is locked more often than not.
- Each incoming student is required to pay a sixty dollar "activities fee."
- Approximately 470 students paid the activities fee in August of 1986.
- Approximately \$28,000.00 in activity fees were collected for the 1986-87 year.
- SBA's budget allocations for 1986-87 are approximately \$16,000.00.
- The students have had the privilege of three "tangs" this year.

This election, think of what you would like accomplished next year and choose the officers and representatives you think can do the job. SBA may be taken less than seriously, but they have control over student funds and receive tuition benefits. Make next year's SBA responsible to the student body.

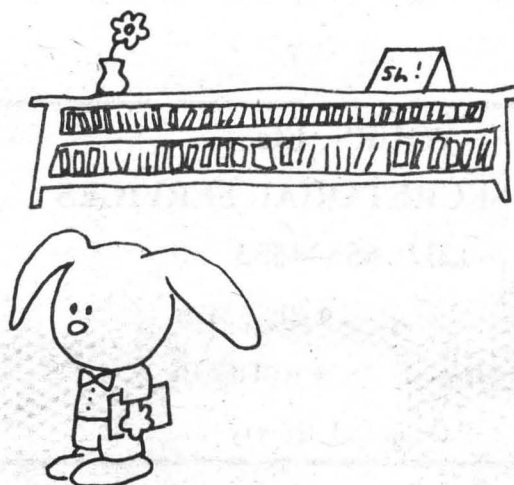
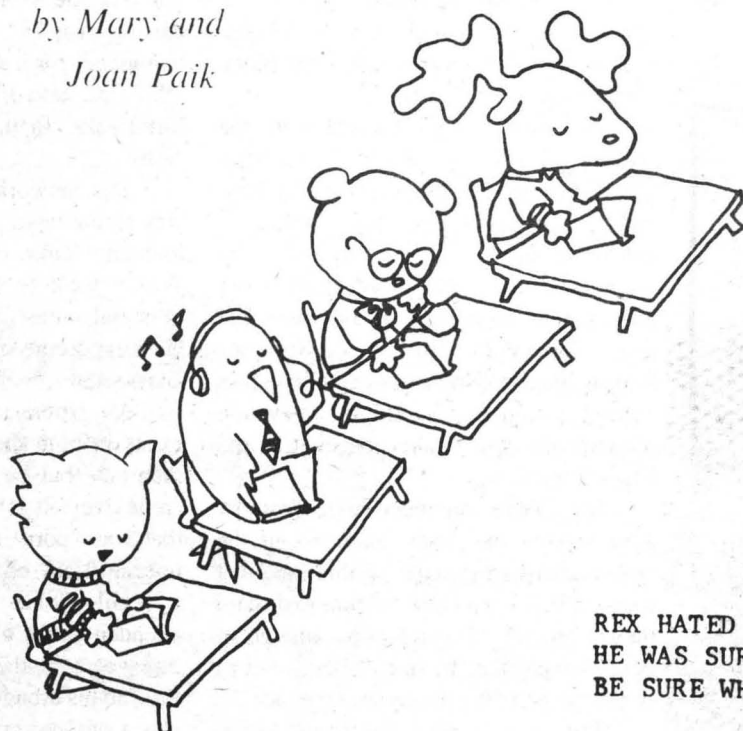
Think before you vote.

PUBLICATION GUIDELINES

1. All copy must be TYPED and DOUBLE-SPACED.
2. Deadlines will be approximately the FIFTEENTH of each month. Specifics will be posted.
3. Submission does not guarantee immediate publication. The editors reserve the right to reject or edit copy at their discretion.

The First Year at Law School

by Mary and
Joan Paik



REX HATED LAW SCHOOL THE WAY HE HATED CHEMISTRY. HE WAS SURE IT MEANT SOMETHING, BUT HE COULDN'T BE SURE WHAT.

CLEAN URINE

by Alan Dershowitz

You're sitting at your desk, daydreaming. The weekend is at hand. T.G.I.F.

Suddenly, the serenity is broken. Your boss walks in. "Charlie, it's your turn," he says. You fear that a last-minute rush of orders may deprive you of your weekend rest; but it's worse than you expected.

"You've got to drop your pants and leave us a little sample before you go home today—the random drug testing mandated by the home office. Don't worry. It's for the potheads and snorters, not for guys like you and me."

But you are worried. Last night at a party, you took a few puffs of a joint. The previous weekend you snorted a line of cocaine. You don't think of yourself as a druggie. You indulge maybe two or three times a month. Your performance at work is never affected. But you can't decline; that would mean your job.

You turn to an office mate for advice. He smiles and tells you that American initiative has come to the rescue. He pulls a small packet of powder out of his pocket. It looks like a drug, but he explains to you that it is actually the antidote: clean urine powder. Just add warm water and turn it

in at the company lab.

This is not just a fantasy: Several firms are, in fact, marketing various kinds of "clean" urine samples. "You can actually *study* for a urine test," boasts one ad for a company that instructs you how to fool the machine. Another company guarantees that its urine comes from members of a Bible-study group right from the buckle of the Bible Belt. You can't get much cleaner than that!

Not that this is a completely new idea; paroled drug addicts, who are often required to take a regular urine tests, have been borrowing or buying fresh urine from friends, relatives and associates for a long time. However, so many people are now subjected to drug tests that selling the stuff in packages has become a viable business. Necessity is certainly the mother of this illegitimate child of the 1980's.

But is all this really legal? Law enforcement authorities want to close down these companies, claiming that they will destroy legitimate drug testing. The innovative business people marketing the products argue that it is perfectly reasonable to fight fire with fire, and technology with counter-technology.

A few analogies come to mind. Term-paper factories, "head shops" and stores that sell radar detectors all cater to customers who probably are committing criminal or, at least, fraudulent acts. Some states have enacted laws to criminalize such businesses, and it probably will be made a crime to defraud urine testers, especially when the tests are mandated by law. Those who sell the cheating devices probably will be regarded as accessories to fraud.

This entire process of action and counteraction is quintessentially American. The government starts the game by overreacting to the real problem of heavy drug use among employees in drug-sensitive jobs—transportation workers, police and members of the military—by trying to catch even moderate users in non-sensitive jobs. The free market responds with a shield that is also far too wide. It threatens to neutralize even the most limited testing narrowly focused on sensitive employees.

A balance must be struck. It is unlikely that the government will strike the appropriate balance, since getting soft on drug use is almost always bad politics. Nor are the increasingly pro-government federal courts likely to intervene on behalf of employees, except perhaps in egregious cases. But the free market may well succeed where the laws fails.

It turns out that these new-fangled cheating devices are not absolutely fool-proof. They can be detected, but only at considerable expense. A rational market probably will limit the expensive counter-detection to the most drug-sensitive jobs. Thus, the federal aviation authorities will probably decide that it is worth the extra money to make sure that pilots and air traffic controllers are not cheating the drug tests, but they will hesitate to spend the additional money on flight attendants or ticket agents. The effect of all these spy-vs.-spy machinations may well be a relatively rational limitation on effective drug testing.

The moral costs of this back-and-forth process are, however, considerable. The current overly broad testing may breed a distrust of government, which will lead to a cynical acceptance of cheating. Any acceptance of cheating, even one limited to overly broad drug testing, cannot help but spread to other areas. In the end, it would be far better to strike the proper balance directly, rather through this twisted free-market mechanism.

In other words, the Bible Belt Urine Kit is no answer to the overkill of drug testing, but rather a symptom of it. Drug abuse is a problem that must be addressed sensibly—not sensationally or surreptitiously.

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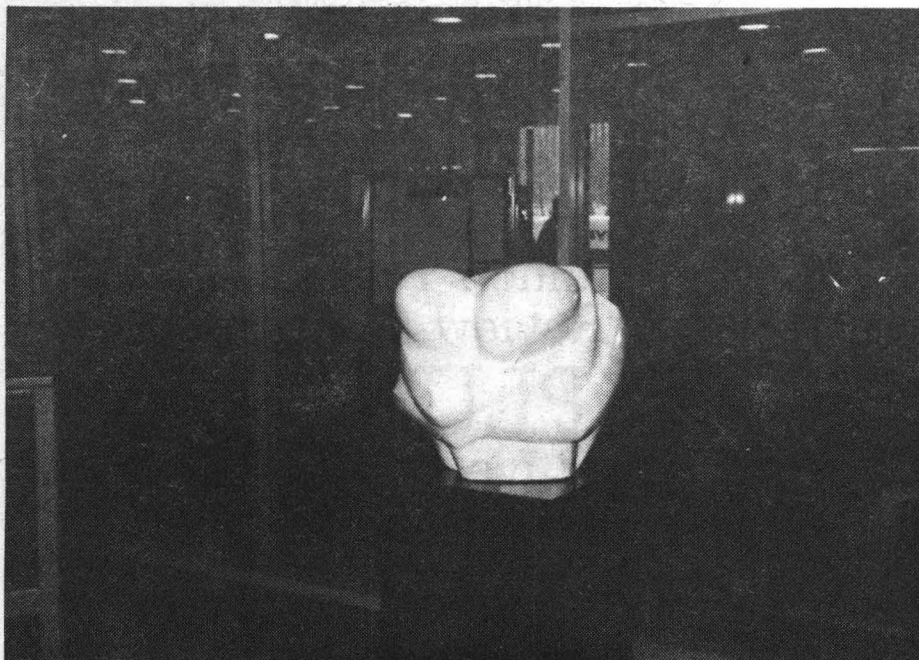
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DEATH ROW CLERK

by Clifford Sloan

A few weeks after I began my Supreme Court clerkship, I worked on my first death penalty case. A Texas convict was scheduled to be executed the following morning. He had filed an application for a stay of execution, raising legal issues that he thought warranted the court's attention.

Throughout a long afternoon and evening, clerks conferred, argued and studied copious papers, repeatedly phoned the justices, or tried to phone them. Since it was the middle of summer, most were out of town, some in hard-to-reach places. Eventually, the court issued a stay.

For me, and almost all the other clerks, it had been our baptism in death penalty work. It was not the first time we had confronted the death penalty as a searingly divisive philosophical and emotional issue. But it was our initiation into the death penalty as a grueling part of our daily work.

Death penalty work arises in the Supreme Court in three ways. First, it arises when a last-minute stay of execution is requested. In the final hours before almost every death penalty, the court is besieged with applications for stays. At that point it appears that all other courts have denied relief, and the Supreme Court is truly the court of last resort.

Second, it arises as part of the weekly work of reviewing petitions for certiorari (requests for the court to hear and decide a case). My rough estimate would be that in every week's batch of 50 in forma pauperis applications (from those who cannot afford the court's filing fee), some three to 10 petitions involve death penalty cases.

Third, death penalty work arises among the cases that the court agrees to hear. In 1985-86, for example, the court struck down death penalties in cases in which the defendant had not been allowed to question prospective jurors about possible racial prejudice and in which the defendant had not been allowed to introduce evidence of his good behavior in prison as a "mitigating circumstance" at the sentencing phase.

It upheld and refused to hear death penalty cases in which opponents of the death penalty had been excluded from the jury and in which the prosecutor had engaged in numerous acts of prosecutorial misconduct, including telling the jury that the defendant was an "animal" who did not deserve to live.

My goal here is not to enter the fray between advocates and opponents of the death penalty. I hope simply to report some of the dominant impressions that linger, some months since I have grappled with the issue on a daily basis.

One of the most striking impressions is the utter savagery of the crimes. One can't help but wonder at the inhumanity of man to man. Some truly grotesque crimes stand out. The Texas convict was convicted of brutally raping and murdering a young housewife. A gash was found in the victim's stomach, and there were allegations that the assailant's penis had been inserted into the wound. A Georgia convict had killed his homosexual lover by jamming a screwdriver into his ear and twisting it; he then tried to dispose of the body by dismembering it and flushing it down the garbage disposal.

Another dominant impression is that in the vast majority of death penalty cases there seemed to be overwhelming evidence of the defendant's guilt. I write this with hesitation because it is so easily misunderstood. It is important to add three caveats.

First, deciding whether the evidence is sufficient to qualify as overwhelming is usually left to the jury; a challenge based on insufficiency of the evidence would be unlikely to succeed in the Supreme Court. Second, even if defendants are guilty, that is not justification for relaxing constitutional protections. Third, under current death penalty jurisprudence, the mere fact of killing is not sufficient to justify the death penalty. Rather, there must be specific "aggravating factors" that overcome a defendant's "mitigating circumstances." Thus, evidence of guilt is not at all tantamount to evidence that the death penalty is appropriate. Still, with a few important exceptions, there rarely seemed to be any doubt about whether the defendant had committed the crime for which he had been sentenced to death.

Whether somebody received the death penalty very often seemed to be a function of the quality of their lawyers. Although there are exceptions, by and large the people who receive the death penalty are dirt poor.

Poor legal representation is especially important considering the "sentencing phase," in which the state must show that aggravating factors outweigh mitigating circumstances. The defendant has the opportunity to offer any mitigating circumstance that might justify a life sentence rather than the death penalty. The evidence mitigates not the *guilt*, but the sentence.

Again and again, in cases that I reviewed, potential mitigating evidence lay readily available—medical experts who could testify to mental retardation or diminished capacity; relatives who could explain how this individual had been brutalized; veterans who could testify about the defendant's combat valor, or about the warping effects of battles they had experienced. Again and again,

defense counsel made little or no effort to reach such witnesses.

I was also struck by the severe strain that the death penalty places on the court and on the justices. The public record of the 1985 term reveals sharp divisions among the justices about the handling of death penalty cases.

Since almost every execution is preceded by the last-minute stay applications, almost every execution requires action by the justices, whatever the time of day or night. Justices become accustomed to clerks calling in the middle of the night with the latest news on the frantic flurry of last-minute efforts and counterefforts.

All this takes place as the allotted hours are winding down. The public record for the 1985 term reports the court once granted a stay until 5 p.m. of the same day. I recall wondering what the scene must have been as the prisoner, warden, executioner, lawyers and all those assembled learned that the defendant had received a stay of several hours—and nothing further happened until the court announced that the stay was removed.

And, of course, as with any human endeavor, there are fallibilities. In one case, a clerk confused two defendants seeking stays at the same time, and advised granting and denying a stay to the wrong individuals. Fortunately, the mistake had no effect on the eventual outcome.

The tension and gravity of the death penalty sometimes encourages a bizarre "gallows humor." There were stories of a clerk who flashed the lights after each electrocution; of another who found amusement in some correlation between death penalties and the "execute" and "rub out" buttons on his word processor. But almost every clerk I knew was profoundly touched and affected by the weight of death penalty work—by the realization that one's efforts, under difficult, pressured and trying circumstances, might well have a direct bearing on the immediate questions of whether someone would die.

In the end, opinions about the death penalty are entangled in broad, important questions: of punishment and retribution; of social purpose and societal standards; of mercy and morality. For those who vigorously oppose the death penalty, it is important to understand the full brutality and savagery of the crimes involved. For those who vigorously support the death penalty, it is just as important to know that imposition of the death penalty frequently results from nothing more than poverty and poor lawyering. And for those on both sides it is critical to see that the Supreme Court confronts the rapidly quickening pace of executions as a very human institution.

(Clifford Sloan served as a clerk for Justice John Paul Stevens in 1985 and 1986.)

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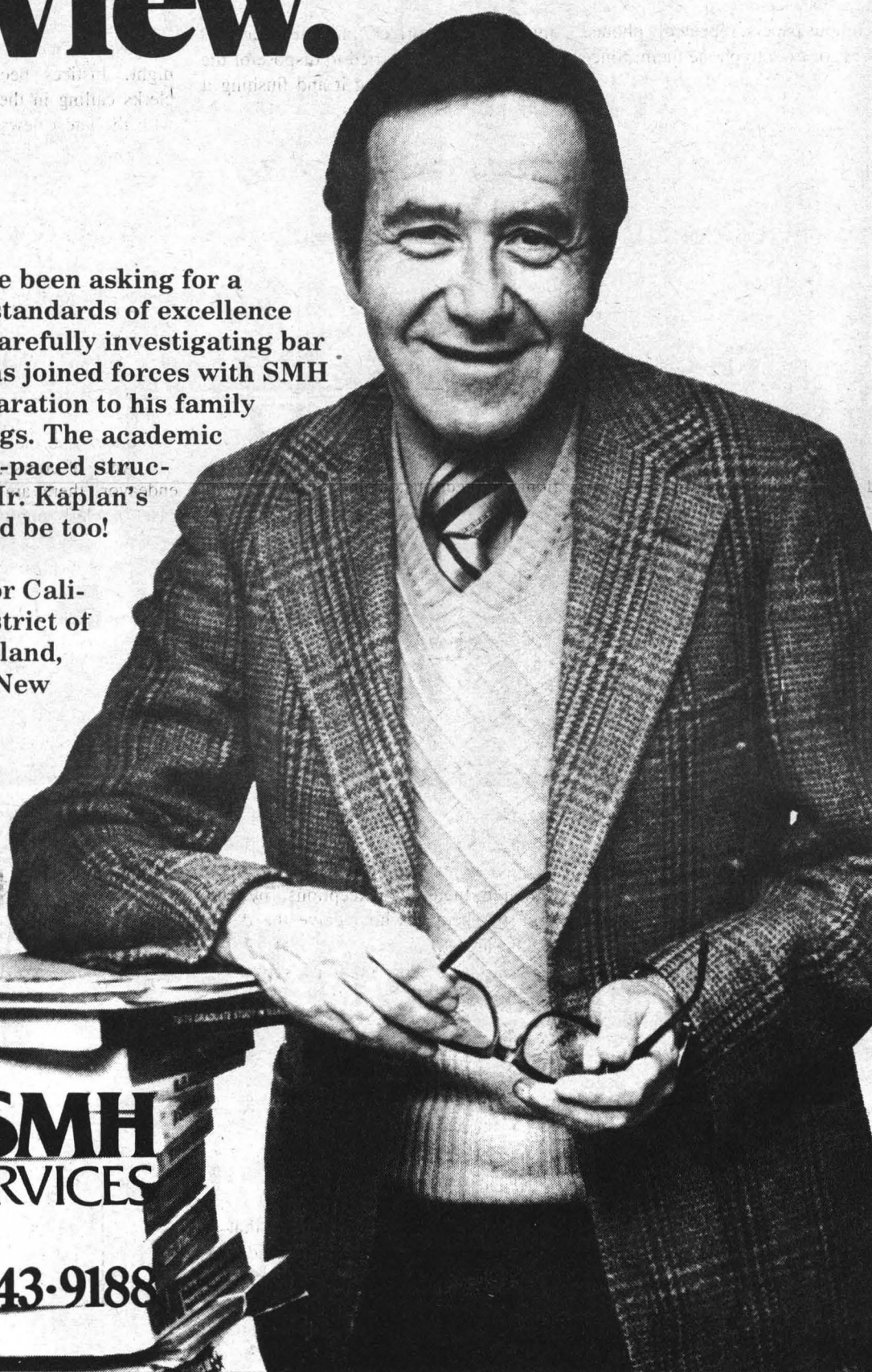


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